

ASSEMBLY BILL

No. 217

Introduced by Assembly Member Carter

January 31, 2011

An act to amend Section 6404.5 of the Labor Code, relating to occupational safety and health.

LEGISLATIVE COUNSEL'S DIGEST

AB 217, as introduced, Carter. Workplace smoking prohibition: long-term health care facilities.

Existing law prohibits an employer from knowingly or intentionally permitting, and a person from engaging in, the smoking of tobacco products in an enclosed space at a place of employment. Existing law provides that “place of employment” for purposes of that prohibition does not include, among other places, patient smoking areas in long-term health care facilities, as defined. Existing law provides that any violation of that prohibition is an infraction, punishable by a fine not to exceed \$100 for a first violation, \$200 for a 2nd violation within one year, and \$500 for a 3rd and for each subsequent violation within one year.

This bill would delete that exception for patient smoking areas in long-term health care facilities, thereby making those areas subject to the smoking prohibition described above.

By creating an additional crime punishable as an infraction, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6404.5 of the Labor Code is amended to
2 read:
- 3 6404.5. (a) The Legislature finds and declares that regulation
4 of smoking in the workplace is a matter of statewide interest and
5 concern. It is the intent of the Legislature in enacting this section
6 to prohibit the smoking of tobacco products in all (100 percent of)
7 enclosed places of employment in this state, as covered by this
8 section, thereby eliminating the need of local governments to enact
9 workplace smoking restrictions within their respective jurisdictions.
10 It is further the intent of the Legislature to create a uniform
11 statewide standard to restrict and prohibit the smoking of tobacco
12 products in enclosed places of employment, as specified in this
13 section, in order to reduce employee exposure to environmental
14 tobacco smoke to a level that will prevent anything other than
15 insignificantly harmful effects to exposed employees, and also to
16 eliminate the confusion and hardship that can result from enactment
17 or enforcement of disparate local workplace smoking restrictions.
18 Notwithstanding any other provision of this section, it is the intent
19 of the Legislature that any area not defined as a “place of
20 employment” pursuant to subdivision (d) or in which the smoking
21 of tobacco products is not regulated pursuant to subdivision (e)
22 shall be subject to local regulation of smoking of tobacco products.
- 23 (b) No employer shall knowingly or intentionally permit, and
24 no person shall engage in, the smoking of tobacco products in an
25 enclosed space at a place of employment. “Enclosed space”
26 includes lobbies, lounges, waiting areas, elevators, stairwells, and
27 restrooms that are a structural part of the building and not
28 specifically defined in subdivision (d).
- 29 (c) For purposes of this section, an employer who permits any
30 nonemployee access to his or her place of employment on a regular
31 basis has not acted knowingly or intentionally in violation of this
32 section if he or she has taken the following reasonable steps to
33 prevent smoking by a nonemployee:
- 34 (1) Posted clear and prominent signs, as follows:

1 (A) Where smoking is prohibited throughout the building or
2 structure, a sign stating “No smoking” shall be posted at each
3 entrance to the building or structure.

4 (B) Where smoking is permitted in designated areas of the
5 building or structure, a sign stating “Smoking is prohibited except
6 in designated areas” shall be posted at each entrance to the building
7 or structure.

8 (2) Has requested, when appropriate, that a nonemployee who
9 is smoking refrain from smoking in the enclosed workplace.

10 For purposes of this subdivision, “reasonable steps” does not
11 include (A) the physical ejection of a nonemployee from the place
12 of employment or (B) any requirement for making a request to a
13 nonemployee to refrain from smoking, under circumstances
14 involving a risk of physical harm to the employer or any employee.

15 (d) For purposes of this section, “place of employment” does
16 not include any of the following:

17 (1) Sixty-five percent of the guestroom accommodations in a
18 hotel, motel, or similar transient lodging establishment.

19 (2) Areas of the lobby in a hotel, motel, or other similar transient
20 lodging establishment designated for smoking by the establishment.
21 An establishment may permit smoking in a designated lobby area
22 that does not exceed 25 percent of the total floor area of the lobby
23 or, if the total area of the lobby is 2,000 square feet or less, that
24 does not exceed 50 percent of the total floor area of the lobby. For
25 purposes of this paragraph, “lobby” means the common public
26 area of an establishment in which registration and other similar or
27 related transactions, or both, are conducted and in which the
28 establishment’s guests and members of the public typically
29 congregate.

30 (3) Meeting and banquet rooms in a hotel, motel, other transient
31 lodging establishment similar to a hotel or motel, restaurant, or
32 public convention center, except while food or beverage functions
33 are taking place, including setup, service, and cleanup activities,
34 or when the room is being used for exhibit purposes. At times
35 when smoking is not permitted in a meeting or banquet room
36 pursuant to this paragraph, the establishment may permit smoking
37 in corridors and prefunction areas adjacent to and serving the
38 meeting or banquet room if no employee is stationed in that
39 corridor or area on other than a passing basis.

(4) Retail or wholesale tobacco shops and private smokers' lounges. For purposes of this paragraph:

(A) "Private smokers' lounge" means any enclosed area in or attached to a retail or wholesale tobacco shop that is dedicated to the use of tobacco products, including, but not limited to, cigars and pipes.

(B) "Retail or wholesale tobacco shop" means any business establishment the main purpose of which is the sale of tobacco products, including, but not limited to, cigars, pipe tobacco, and smoking accessories.

(5) Cabs of motortrucks, as defined in Section 410 of the Vehicle Code, or truck tractors, as defined in Section 655 of the Vehicle Code, if no nonsmoking employees are present.

(6) Warehouse facilities. For purposes of this paragraph, "warehouse facility" means a warehouse facility with more than 100,000 square feet of total floorspace, and 20 or fewer full-time employees working at the facility, but does not include any area within a facility that is utilized as office space.

(7) Gaming clubs, in which smoking is permitted by subdivision (f). For purposes of this paragraph, "gaming club" means any establishment where any card game is played for currency, check, credit, or any other thing of value and is not prohibited and made unlawful by Chapter 9 (commencing with Section 319) or Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code or by local ordinance, or bingo facility, as defined in Section 326.5 of the Penal Code, that restricts access to minors under 18 years of age.

(8) Bars and taverns, in which smoking is permitted by subdivision (f). For purposes of this paragraph, "bar" or "tavern" means a facility primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises, in which the serving of food is incidental. "Bar or tavern" includes those facilities located within a hotel, motel, or other similar transient occupancy establishment. However, when located within a building in conjunction with another use, including a restaurant, "bar" or "tavern" includes only those areas used primarily for the sale and service of alcoholic beverages. "Bar" or "tavern" does not include the dining areas of a restaurant, regardless of whether alcoholic beverages are served therein.

1 (9) Theatrical production sites, if smoking is an integral part of
2 the story in the theatrical production.

3 (10) Medical research or treatment sites, if smoking is integral
4 to the research and treatment being conducted.

5 (11) Private residences, except for private residences licensed
6 as family day care homes, during the hours of operation as family
7 day care homes and in those areas where children are present.

8 ~~(12) Patient smoking areas in long-term health care facilities,~~
9 ~~as defined in Section 1418 of the Health and Safety Code.~~

10 ~~(13)~~

11 (12) Breakrooms designated by employers for smoking, provided
12 that all of the following conditions are met:

13 (A) Air from the smoking room shall be exhausted directly to
14 the outside by an exhaust fan. Air from the smoking room shall
15 not be recirculated to other parts of the building.

16 (B) The employer shall comply with any ventilation standard
17 or other standard utilizing appropriate technology, including, but
18 not limited to, mechanical, electronic, and biotechnical systems,
19 adopted by the Occupational Safety and Health Standards Board
20 or the federal Environmental Protection Agency. If both adopt
21 inconsistent standards, the ventilation standards of the Occupational
22 Safety and Health Standards Board shall be no less stringent than
23 the standards adopted by the federal Environmental Protection
24 Agency.

25 (C) The smoking room shall be located in a nonwork area where
26 no one, as part of his or her work responsibilities, is required to
27 enter. For purposes of this subparagraph, “work responsibilities”
28 does not include any custodial or maintenance work carried out in
29 the breakroom when it is unoccupied.

30 (D) There are sufficient nonsmoking breakrooms to
31 accommodate nonsmokers.

32 ~~(14)~~

33 (13) Employers with a total of five or fewer employees, either
34 full time or part time, may permit smoking where all of the
35 following conditions are met:

36 (A) The smoking area is not accessible to minors.

37 (B) All employees who enter the smoking area consent to permit
38 smoking. No one, as part of his or her work responsibilities, shall
39 be required to work in an area where smoking is permitted. An
40 employer who is determined by the division to have used coercion

1 to obtain consent or who has required an employee to work in the
2 smoking area shall be subject to the penalty provisions of Section
3 6427.

4 (C) Air from the smoking area shall be exhausted directly to
5 the outside by an exhaust fan. Air from the smoking area shall not
6 be recirculated to other parts of the building.

7 (D) The employer shall comply with any ventilation standard
8 or other standard utilizing appropriate technology, including, but
9 not limited to, mechanical, electronic, and biotechnical systems,
10 adopted by the Occupational Safety and Health Standards Board
11 or the federal Environmental Protection Agency. If both adopt
12 inconsistent standards, the ventilation standards of the Occupational
13 Safety and Health Standards Board shall be no less stringent than
14 the standards adopted by the federal Environmental Protection
15 Agency.

16 This paragraph shall not be construed to (i) supersede or render
17 inapplicable any condition or limitation on smoking areas made
18 applicable to specific types of business establishments by any other
19 paragraph of this subdivision or (ii) apply in lieu of any otherwise
20 applicable paragraph of this subdivision that has become
21 inoperative.

22 (e) Paragraphs *(12) and (13) and (14)* of subdivision (d) shall
23 not be construed to require employers to provide reasonable
24 accommodation to smokers, or to provide breakrooms for smokers
25 or nonsmokers.

26 (f) (1) Except as otherwise provided in this subdivision,
27 smoking may be permitted in gaming clubs, as defined in paragraph
28 (7) of subdivision (d), and in bars and taverns, as defined in
29 paragraph (8) of subdivision (d), until the earlier of the following:

30 (A) January 1, 1998.

31 (B) The date of adoption of a regulation (i) by the Occupational
32 Safety and Health Standards Board reducing the permissible
33 employee exposure level to environmental tobacco smoke to a
34 level that will prevent anything other than insignificantly harmful
35 effects to exposed employees or (ii) by the federal Environmental
36 Protection Agency establishing a standard for reduction of
37 permissible exposure to environmental tobacco smoke to an
38 exposure level that will prevent anything other than insignificantly
39 harmful effects to exposed persons.

1 (2) If a regulation specified in subparagraph (B) of paragraph
2 (1) is adopted on or before January 1, 1998, smoking may thereafter
3 be permitted in gaming clubs and in bars and taverns, subject to
4 full compliance with, or conformity to, the standard in the
5 regulation within two years following the date of adoption of the
6 regulation. An employer failing to achieve compliance with, or
7 conformity to, the regulation within this two-year period shall
8 prohibit smoking in the gaming club, bar, or tavern until
9 compliance or conformity is achieved. If the Occupational Safety
10 and Health Standards Board and the federal Environmental
11 Protection Agency both adopt regulations specified in subparagraph
12 (B) of paragraph (1) that are inconsistent, the regulations of the
13 Occupational Safety and Health Standards Board shall be no less
14 stringent than the regulations of the federal Environmental
15 Protection Agency.

16 (3) If a regulation specified in subparagraph (B) of paragraph
17 (1) is not adopted on or before January 1, 1998, the exemptions
18 specified in paragraphs (7) and (8) of subdivision (d) shall become
19 inoperative on and after January 1, 1998, until a regulation is
20 adopted. Upon adoption of such a regulation on or after January
21 1, 1998, smoking may thereafter be permitted in gaming clubs and
22 in bars and taverns, subject to full compliance with, or conformity
23 to, the standard in the regulation within two years following the
24 date of adoption of the regulation. An employer failing to achieve
25 compliance with, or conformity to, the regulation within this
26 two-year period shall prohibit smoking in the gaming club, bar,
27 or tavern until compliance or conformity is achieved. If the
28 Occupational Safety and Health Standards Board and the federal
29 Environmental Protection Agency both adopt regulations specified
30 in subparagraph (B) of paragraph (1) that are inconsistent, the
31 regulations of the Occupational Safety and Health Standards Board
32 shall be no less stringent than the regulations of the federal
33 Environmental Protection Agency.

34 (4) From January 1, 1997, to December 31, 1997, inclusive,
35 smoking may be permitted in gaming clubs, as defined in paragraph
36 (7) of subdivision (d), and in bars and taverns, as defined in
37 paragraph (8) of subdivision (d), subject to both of the following
38 conditions:

39 (A) If practicable, the gaming club or bar or tavern shall
40 establish a designated nonsmoking area.

1 (B) If feasible, no employee shall be required, in the
2 performance of ordinary work responsibilities, to enter any area
3 in which smoking is permitted.

4 (g) The smoking prohibition set forth in this section shall
5 constitute a uniform statewide standard for regulating the smoking
6 of tobacco products in enclosed places of employment and shall
7 supersede and render unnecessary the local enactment or
8 enforcement of local ordinances regulating the smoking of tobacco
9 products in enclosed places of employment. Insofar as the smoking
10 prohibition set forth in this section is applicable to all (100-percent)
11 places of employment within this state and, therefore, provides
12 the maximum degree of coverage, the practical effect of this section
13 is to eliminate the need of local governments to enact enclosed
14 workplace smoking restrictions within their respective jurisdictions.

15 (h) Nothing in this section shall prohibit an employer from
16 prohibiting smoking in an enclosed place of employment for any
17 reason.

18 (i) The enactment of local regulation of smoking of tobacco
19 products in enclosed places of employment by local governments
20 shall be suspended only for as long as, and to the extent that, the
21 (100-percent) smoking prohibition provided for in this section
22 remains in effect. In the event this section is repealed or modified
23 by subsequent legislative or judicial action so that the (100-percent)
24 smoking prohibition is no longer applicable to all enclosed places
25 of employment in California, local governments shall have the full
26 right and authority to enforce previously enacted, and to enact and
27 enforce new, restrictions on the smoking of tobacco products in
28 enclosed places of employment within their jurisdictions, including
29 a complete prohibition of smoking. Notwithstanding any other
30 provision of this section, any area not defined as a “place of
31 employment” or in which smoking is not regulated pursuant to
32 subdivision (d) or (e), shall be subject to local regulation of
33 smoking of tobacco products.

34 (j) Any violation of the prohibition set forth in subdivision (b)
35 is an infraction, punishable by a fine not to exceed one hundred
36 dollars (\$100) for a first violation, two hundred dollars (\$200) for
37 a second violation within one year, and five hundred dollars (\$500)
38 for a third and for each subsequent violation within one year. This
39 subdivision shall be enforced by local law enforcement agencies,

1 including, but not limited to, local health departments, as
2 determined by the local governing body.

3 (k) Notwithstanding Section 6309, the division shall not be
4 required to respond to any complaint regarding the smoking of
5 tobacco products in an enclosed space at a place of employment,
6 unless the employer has been found guilty pursuant to subdivision
7 (j) of a third violation of subdivision (b) within the previous year.

8 (l) If any provision of this act or the application thereof to any
9 person or circumstances is held invalid, that invalidity shall not
10 affect other provisions or applications of the act that can be given
11 effect without the invalid provision or application, and to this end
12 the provisions of this act are severable.

13 SEC. 2. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.